

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGEMENT NO. 397 OF 2003
IN
SUMMARY SUIT NO. 4043 OF 2002

Jayantilal Sakariya .. Plaintiff
versus
Pratham Jewellers & ors. .. Defendants

...

Mr.R.S. Champavat for the plaintiff.

Mr.C. Ardeshir i/b Madekar & Co. fo the defendant
no.3.

CORAM : D.G. KARNIK, J.

DATED : 24th January 2005.

P.C.:

1. Heard the learned counsel for the plaintiff
and defendant no.3.

2. The defendant no.1 is a partnership firm and
defendant nos.2 and 3 are and at the material time

were the partners of the defendant no.1 firm. Both the plaintiff and defendant no.1 are jewellers. At the request of defendants the plaintiff gave to the defendants certain ornaments on approval basis. It was agreed that in the event the defendants do not return the ornaments and/or keep them, they would pay for the price. As the defendants did not return the ornaments, the plaintiff sent a bill which was accepted by the defendants. The defendant no.2 signed on the said bill in token of the said acceptance. As the defendant did not pay the price, the plaintiff issued notice and has then filed the suit for the recovery of the price. The notice was received by the defendant. The defendant no.2 sent a reply admitting receipt of the goods but contended that a part payment of Rs.1,00,000/- was made. A rejoinder was sent by the plaintiff denying the part payment. No further rejoinder was sent by defendant nos.1 or 2. The defendant no.3 did not send any reply though the notice was served on her.

3. At the stage of the hearing of the Summons for Judgement, the defendant no.3 contends that the goods were received by the defendant no.2 in his personal capacity and not in the capacity as partner of

defendant no.1 and hence, defendant no.3 is not liable. It is worthwhile to note that the receipt of the goods is not denied by the defendant no.3 but it is only contended that the goods were received by the defendant no.2 in his personal capacity. If this contention was correct the defendant no.3 would have replied the demand notice when a demand was made for the price of the goods. The defendant no.3 did not reply the notice. The present defence, therefore, is an afterthought. In the circumstances, the defendant no.3 can be granted only conditional leave to defend the suit, subject to her depositing about 50% of the amount.

4. The defendant no.3 is granted conditional leave to defend the suit subject to her depositing in the Court a sum of Rs.3,00,000/- within a period of eight weeks. The money, if deposited shall be invested in State Bank of India (or any other nationalised Bank of the choice of the defendant no.3 if such choice is indicated at the time of deposit) initially for a period of 13 months to be renewed from time to time till the decision of the suit. On such deposit, the suit shall stand transferred to the list of commercial causes.

D.G. KARNIK, J